

Felons Finding It Easy to Regain Gun Rights



Restoring Gun Rights to Felons: Every year, thousands of felons across the country have their gun rights reinstated, often with little or no review.

By [MICHAEL LUO](#)

Published: November 13, 2011

In February 2005, Erik Zettergren came home from a party after midnight with his girlfriend and another couple. They had all been drinking heavily, and soon the other man and Mr. Zettergren's girlfriend passed out on his bed. When Mr. Zettergren went to check on them later, he found his girlfriend naked from the waist down and the other man, Jason Robinson, with his pants around his ankles.

Multimedia



[Interactive Feature](#)

[Documents: Felons and Guns](#)



Geoff Crimmins/Moscow-Pullman Daily News, via Associated Press

Erik Zettergren killed a man soon after regaining gun rights.

Enraged, Mr. Zettergren ordered Mr. Robinson to leave. After a brief confrontation, Mr. Zettergren shot him in the temple at point-blank range with a Glock-17 semiautomatic handgun. He then forced Mr. Robinson's hysterical fiancée, at gunpoint, to help him dispose of the body in a nearby river.

It was the first [homicide](#) in more than 30 years in the small town of Endicott, in eastern Washington. But for a judge's ruling two months before, it would probably never have happened.

For years, Mr. Zettergren had been barred from possessing firearms because of two felony convictions. He had a history of mental health problems and friends said he was dangerous. Yet Mr. Zettergren's gun rights were restored without even a hearing, under a state law that gave the judge no leeway to deny the application as long as certain basic requirements had been met. Mr. Zettergren, then 36, wasted no time retrieving several guns he had given to a friend for safekeeping.

"If he hadn't had his rights restored, in this particular instance, it probably would have saved the life of the other person," said Denis Tracy, the prosecutor in Whitman County, who handled [the murder case](#).

Under federal law, people with felony convictions forfeit their right to bear arms. Yet every year, thousands of felons across the country have those rights reinstated, often with little or no review. In several states, they include people convicted of violent crimes, including first-degree murder and manslaughter, an examination by The New York Times has found.

While previously a small number of felons were able to reclaim their gun rights, the process became commonplace in many states in the late 1980s, after Congress started allowing state laws to dictate these reinstatements — part of an overhaul of federal gun laws orchestrated by the [National Rifle Association](#). The restoration movement has gathered force in recent years, as gun

rights advocates have sought to capitalize on the 2008 Supreme Court ruling that the Second Amendment protects an individual's right to bear arms.

This gradual pulling back of what many Americans have unquestioningly assumed was a blanket prohibition has drawn relatively little public notice. Indeed, state law enforcement agencies have scant information, if any, on which felons are getting their gun rights back, let alone how many have gone on to commit new crimes.

While many states continue to make it very difficult for felons to get their gun rights back — and federal felons are out of luck without a presidential pardon — many other jurisdictions are far more lenient, *The Times* found. In some, restoration is automatic for nonviolent felons as soon as they complete their sentences. In others, the decision is left up to judges, but the standards are generally vague, the process often perfunctory. In some states, even violent felons face a relatively low bar, with no waiting period before they can apply.

The Times examined hundreds of restoration cases in several states, among them Minnesota, where William James Holisky II, who had a history of stalking and terrorizing women, got his gun rights back last year, just six months after completing a three-year prison sentence for firing a shotgun into the house of a woman who had broken up with him after a handful of dates. She and her son were inside at the time of the shooting.

“My whole family's convinced that at some point he'll blow a gasket and that he'll come and shoot someone,” said Vicky Holisky-Crets, Mr. Holisky's sister.

Also last year, a judge in Cleveland restored gun rights to Charles C. Hairston, who had been convicted of first-degree murder in North Carolina in 1971 for [shooting a grocery store owner in the head](#) with a shotgun. He also had another felony conviction, in 1995, for corruption of a minor.

Margaret C. Love, a pardon lawyer based in Washington, D.C., who has researched gun rights restoration laws, estimated that, depending on the type of crime, in more than half the states felons have a reasonable chance of getting back their gun rights.

That universe could well expand, as pro-gun groups shed a historical reluctance to advocate publicly for gun rights for felons. Lawyers litigating Second Amendment issues are also starting to challenge the more restrictive restoration laws. Pro-gun groups have pressed the issue in the last few years in states as diverse as Alaska, Ohio, Oregon and Tennessee.

Ohio's Legislature confronted the matter when it passed a law this year fixing a technicality that threatened to invalidate the state's restorations.

Ken Hanson, legislative chairman of the Buckeye Firearms Coalition, argued that felons should be able to reclaim their gun rights just as they can other civil rights.

“If it's a constitutional right, you treat it with equal dignity with other rights,” he said.

But Toby Hoover, executive director of the Ohio Coalition Against Gun Violence, contended that the public was safer without guns in the hands of people who have committed serious crimes.

“It seems that Ohio legislators have plenty of problems to solve that should be a much higher priority than making sure criminals have guns,” Ms. Hoover said in written testimony.

That question — whether the restorations pose a risk to public safety — has received little study, in part because data can be hard to come by.

The Times analyzed data from Washington State, where Mr. Zettergren had his gun rights restored. The most serious felons are barred, but otherwise judges have no discretion to reject the petitions, as long as the applicant fulfills certain criteria. (In 2003, a state appeals court panel stated that a petitioner “had no burden to show that he is safe to own or possess guns.”)

Since 1995, more than 3,300 felons and people convicted of domestic violence misdemeanors have regained their gun rights in the state — 430 in 2010 alone — according to the analysis of data provided by the state police and the court system. Of that number, more than 400 — about 13 percent — have subsequently committed new crimes, the analysis found. More than 200 committed felonies, including murder, assault in the first and second degree, child rape and drive-by shooting.

Even some felons who have regained their firearms rights say the process needs to be more rigorous.

“It’s kind of spooky, isn’t it?” said Beau Krueger, who has [two assaults](#) on his record and got his gun rights back last year in Minnesota after only a [brief hearing](#), in which local prosecutors [did not even participate](#). “We could have all kinds of crazy hoodlums out here with guns that shouldn’t have guns.”

Powerful Lobby Prevails

The federal firearms prohibition for felons dates to the late 1960s, when the assassinations of the Rev. Dr. Martin Luther King Jr. and Senator Robert F. Kennedy, along with rioting across the country, set off a clamor for stricter gun control laws. Congress enacted sweeping legislation that included a provision extending the firearms ban for convicted criminals beyond those who had committed “crimes of violence,” a standard adopted in the 1930s.

“All of our people who are deeply concerned about law and order should hail this day,” President Lyndon B. Johnson said upon signing the Gun Control Act in October 1968.

Even the N.R.A. backed the bill. But by the late 1970s, a more hard-line faction, committed to an expansive view of the Second Amendment, had taken control of the group. A crowning achievement was the Firearm Owners Protection Act of 1986, which significantly loosened federal gun laws.

When it came to felons' gun rights, the legislation essentially left the matter up to states. The federal gun restrictions would no longer apply if a state had restored a felon's civil rights — to vote, sit on a jury and hold public office — and the individual faced no other firearms prohibitions.

The restoration issue drew relatively little notice in the Congressional battle over the bill. But officials of the federal Bureau of Alcohol, Tobacco and Firearms identified the provision in an internal memo as among their serious concerns. Some state law enforcement officials also sounded the alarm.

When Senator David F. Durenberger, a Minnesota Republican, realized after the law passed that thousands of felons, including those convicted of violent crimes, in his state would suddenly be getting their gun rights back, he sought the N.R.A.'s help in rolling back the provision. Doug Kelley, his chief of staff at the time, thought the group would "surely want to close this loophole."

But the senator, Mr. Kelley recalled, "ran into a stone wall," as the N.R.A. threatened to pull its support for him if he did not drop the matter, which he eventually did.

"The N.R.A. slammed the door on us," Mr. Kelley said. "That absolutely baffled me."

Until then, the avenues for restoration had been narrow and few: a direct appeal to the federal firearms agency, which conducted detailed background investigations; a state pardon expressly authorizing gun possession, or a presidential pardon. Felons convicted of crimes involving guns or other weapons, as well as those convicted of violating federal gun laws, were expressly barred from applying to the federal firearms agency.

By contrast, the restoration of civil rights, which is now central to regaining gun rights, is relatively routine, automatic in many states upon completion of a sentence. In some states, felons must also petition for a judicial order specifically restoring firearms rights. Other potential paths include a pardon from the governor or state clemency board or a "set aside"—essentially, an annulment — of the conviction.

Today, in at least 11 states, including Kansas, Ohio, Minnesota and Rhode Island, restoration of firearms rights is automatic, without any review at all, for many nonviolent felons, usually once they finish their sentences, or after a certain amount of time crime-free. Even violent felons may petition to have their firearms rights restored in states like Ohio, Minnesota and Virginia. Some states, including Georgia and Nebraska, award scores of pardons every year that specifically confer gun privileges.

Felons face steep odds, though, in states like California, where the governor's office gives out only a handful of pardons every year, if that.

"It's a long, drawn-out process," said Steve Lindley, chief of the State Department of Justice's firearms bureau. "They were convicted of a felony crime. There are penalties for that."

Studies on the impact of gun restrictions largely support barring felons from possessing firearms.

[One study](#), published in the American Journal of Public Health in 1999, found that denying handgun purchases to felons cut their risk of committing new gun or violent crimes by 20 to 30 percent. A year earlier, a [study](#) in the Journal of the American Medical Association found that handgun purchasers with at least one prior misdemeanor — not even a felony — were more than seven times as likely as those with no criminal history to be charged with new offenses over a 15-year period.

Criminologists studying recidivism have found that [felons usually have to stay out of trouble for about a decade](#) before their risk of committing a crime equals that of people with no records. According to Alfred Blumstein, a professor at Carnegie Mellon University, for violent offenders, that period is 11 to 15 years; for drug offenders, 10 to 14 years; and for those who have committed property crimes, 8 to 11 years. An important caveat: Professor Blumstein did not look at what happens when felons are given guns.

The history of the federal firearms agency's own restoration program, though, offers reason for caution. The program came under attack in the early 1990s, when the Violence Policy Center, a gun control group, discovered that dozens of [felons granted restorations](#) over a five-year period had been arrested again, including some on charges of attempted murder and sexual assault. (The center also found that many of those granted gun rights were felons convicted of violent or drug-related crimes.) In the resulting uproar and over the objections of the N.R.A., [Congress killed the program](#).

A Superficial Process

In 2001, three police officers in the Columbia Heights suburb of Minneapolis were [shot and wounded by a convicted murderer](#) whose firearms rights had been restored automatically in 1987, 10 years after he completed a six-and-a-half year prison sentence and then probation for killing his estranged wife and a family friend with a shotgun. (The State Legislature had imposed the 10-year waiting period for violent felons after it discovered what Senator Durenberger had feared: that felons' gun rights would be restored immediately under the Firearm Owners Protection Act.)

What happened in the wake of the shooting is emblematic of how the issue has played out in many states, particularly where the gun lobby is powerful.

Two Democratic legislators sought to impose a lifetime firearms ban on violent felons, although they concluded that for their bills to have any chance of passing, they would also have to set up a process that held out a hope of eventual restoration. They were unable, however, to get their bills through the Legislature.

The issue was taken up the following year by Republican lawmakers, but it became wrapped up in legislation to relax concealed-weapons laws. Initially, a moderate Republican introduced a bill with a 5- to 10-year waiting period for regaining gun rights, but the waiting period was scrapped entirely in the law, written by gun-rights advocates, that was finally enacted in 2003. That law,

which does not even mandate that prosecutors be notified of the hearings, requires judges to grant the requests merely if the petitioners show “good cause.”

“The decision was, we have good judges and we trust them,” said Joseph Olson, who helped write the statute as president of the advocacy group Concealed Carry Reform Now.

One man who has benefited from a Minnesota judge’s gun rights ruling is William Holisky.

Mr. Holisky, an accountant who has struggled with bipolar disorder and alcoholism, had gone out only a few times with Karen Roman, a nurse he had met online, before she broke up with him.

In August 2006, Ms. Roman was getting ready to work a night shift, putting on makeup in the bathroom of her home in Duluth, when she heard a truck pulling up and a loud boom. Moments later, she heard another boom and glass breaking. She hit the floor, calling out to her teenage son in the other room to do the same as she crawled to the phone to dial 911.

The police arrested Mr. Holisky later that night for drunken driving. Several months later, they [charged](#) him in the shooting as well. He [pleaded guilty](#) to second-degree assault with a dangerous weapon.

Around the same time, he also pleaded guilty to a felony charge of making terroristic threats against an elderly neighbor. The woman had reported to the police that someone — she suspected Mr. Holisky — had left her a threatening and obscene note. She had also reported a series of escalating incidents that included harassing telephone calls, his entering her apartment and someone’s smashing her bedroom window. Mr. Holisky also had a misdemeanor burglary conviction from 2003, for breaking into an ex-girlfriend’s house, as well as another misdemeanor conviction for violating an order of protection.

In Mr. Holisky’s [gun rights hearing](#) in October 2010 in Two Harbors, a small town on the north shore of Lake Superior, Russell Conrow, the prosecutor in Lake County, argued that Mr. Holisky had not yet proved that he could stay clean, given that he had just gotten out of prison. Mr. Conrow also pointed out that there were two active orders of protection against Mr. Holisky.

“There were people still scared of him,” Mr. Conrow said recently.

For his part, Mr. Holisky took documents from the plea agreement in his assault case, in which the prosecutor in neighboring St. Louis County agreed not to oppose the restoration of his firearms rights.

Mr. Holisky, who is 59, did not specify in his often-rambling petition exactly why he wanted a gun. He described his behavior in 2006 as an “aberration.”

The county judge, Kenneth Sandvik, was set to retire in a few months. He knew Mr. Holisky’s family from growing up in the community. Several weeks later, he [ruled](#) that Mr. Holisky had met the basic requirements of the law.

In an interview, Judge Sandvik said he had given considerable weight to the St. Louis County prosecutor's agreement not to oppose the restoration of gun rights for Mr. Holisky. But Gary Bjorklund, an assistant St. Louis County attorney, said in an interview that he had been focused on extracting a guilty plea that would send Mr. Holisky to prison and had thought no judge would take a firearms request from Mr. Holisky seriously.

Judge Sandvik acknowledged that he had not looked into the details of Mr. Holisky's assault case, arguing that his job had been only to review what the prosecutor had presented to him.

"We're not investigators," he said.

The ease with which Mr. Holisky regained his gun rights does not appear to be an anomaly. Using partial data from Minnesota's Judicial Branch, The Times identified more than 70 cases since 2004 of people convicted of "crimes of violence" who have gotten their gun rights back. A closer look at a number of them found a superficial process. The cases included those of Mr. Krueger, who criticized the system as insufficiently rigorous after winning back his gun rights in a perfunctory hearing, and of another man whose petition was approved without even a hearing, even though his felony involved pulling a gun on a man.

The ruling in Mr. Holisky's case prompted members of his family to write a series of frantic e-mails to Judge Sandvik and Mr. Conrow, warning of dire consequences.

It is not entirely clear whether Mr. Holisky, who did not respond to several requests for comment, is legally able to buy a gun at this point, because at least one of the outstanding orders of protection, which expires next year, appears to trip another federal prohibition. But Mr. Holisky has been writing letters to relatives in Texas, threatening legal action if they do not turn over his gun collection.

So far, they have refused.

A Killer's Successful Petition

Just as in Minnesota, violent felons in Ohio are allowed to apply for restoration of firearms rights after completing their sentences. The statute is similarly vague, requiring only that a judge find that the petitioner has "led a law-abiding life since discharge or release, and appears likely to do so."

Only a handful of county clerks in Ohio said they could track these cases, producing records on several dozen restorations. They included people who had been convicted of first-degree murder, voluntary manslaughter, felonious assault and sexual battery.

The case of Charles Hairston in Cuyahoga County stands out.

Mr. Hairston was 17 in January 1971, when he [shot a man to death](#) in Winston-Salem, N.C. Mr. Hairston and a group of neighborhood toughs had been preparing to rob a local grocery store when the owner, Charles Minor, 55, closed up and headed for his car.

“I am fixing to get him,” Mr. Hairston told one of his friends, according to witness statements to the police, before he pulled the trigger on a 20-gauge shotgun.

Mr. Hairston spent 18 years in prison before being released on parole in 1989. He moved to Cleveland and started working in heating and cooling, a trade he had learned behind bars.

In 1995, he pleaded no contest to a misdemeanor charge for allegedly grabbing and pushing his wife.

More seriously, later that year he was indicted on 60 counts of rape, felonious sexual penetration and gross sexual imposition; prosecutors charged that he had forced sex upon his stepdaughter, starting when she was 12. He was acquitted of the most serious charges and convicted only of [corruption of a minor](#) for one encounter at a motel for which prosecutors were able to provide [corroborating evidence](#) beyond the girl’s detailed testimony.

Mr. Hairston, who denies the charges and is still fighting the conviction, filed his first gun rights restoration application in 2006 in Cuyahoga County but was summarily denied.

When he filed a new petition two years later, a judge thought he was ineligible and denied him again, though she wrote in her decision that she did not believe Mr. Hairston was likely to break the law again. But an appeals court ruled that the judge had misread the statute, and sent the case back for another hearing late last year.

The county prosecutor’s office had vigorously opposed the restoration from the beginning. But Mr. Hairston, who took in several friends as character witnesses, told the judge he had grown up in prison.

“Nearly 40 years ago, you know, I was a dumb kid,” Mr. Hairston said at his first hearing. He added, “I am in a situation now where if, God forbid, if someone was to come into my home and attack me, my wife, there isn’t a lot I could say about it, there isn’t a lot I could do.”

In the end, the judge, Hollie L. Gallagher, granted his petition without comment.

Soon after the judge’s ruling, Mr. Hairston obtained a concealed weapons permit from a neighboring county and bought a 9-millimeter semiautomatic handgun.

Returning to Crime

Erik Zettergren originally lost his gun rights in 1987 because of a felony conviction for dealing [marijuana](#). A decade later, the police went to his house after being called by his ex-wife and discovered a cache of guns. He was convicted of another felony, unlawful possession of a firearm.

He relinquished his weapons to friends but eventually got them back, sometimes hiding them in an old car in his backyard, according to friends. Sometime after that, though, he became worried

that the police might come after him again and turned over the guns — two long guns and a Glock pistol — to a friend, Tom Williams.

“I kept them under my bed,” Mr. Williams said.

In December 2004, Mr. Zettergren [successfully petitioned](#) in Kittitas County — a three-hour drive from his home — to have his gun rights restored. (Like Minnesota’s, Washington’s law allows petitioners to apply anywhere.) Court records show he did not even have a hearing. Instead, his lawyer, Paul T. Ferris, who specializes in these cases, took care of the matter.

Right away, Mr. Zettergren retrieved his guns from Mr. Williams and soon obtained a concealed pistol license. He made something of a sport of showing off his Glock to friends. “He was so proud of that thing,” said Larry Persons, a friend. “He was flashing it in front of everybody.”

Not long after, he would use it in the killing.

Washington’s gun rights restoration statute dates to a 1995 statewide initiative, the Hard Times for Armed Crimes Act, that toughened penalties for crimes involving firearms. The initiative was spearheaded, in part, by pro-gun activists, including leaders of the Second Amendment Foundation, an advocacy group, and the N.R.A.

Although it drew little notice at the time, the legislation also included an expansion of what had been very limited eligibility for restoration of firearms rights.

“There were a lot of people who we felt should be able to get their gun rights restored who could not,” said Alan M. Gottlieb, founder of the Second Amendment Foundation, who was active in the effort.

Under the legislation, “Class A” felons — who have committed the most serious crimes, like murder and manslaughter — are ineligible, as are sex offenders. Otherwise, judges are required to grant the petitions as long as, essentially, felons have not been convicted of any new crimes in the five years after completing their sentences. Judges have no discretion to deny the requests based upon character, mental health or any other factors. Mr. Gottlieb said they explicitly wrote the statute this way.

“We were having problems with judges that weren’t going to restore rights no matter what,” he said.

The statute’s mix of strictness and leniency makes Washington a useful testing ground.

The Times’s analysis found that among the more than 400 people who committed crimes after winning back their gun rights under the new law, more than 70 committed Class A or B felonies. Over all, more than 80 were convicted of some sort of assault and more than 100 of drug offenses.

There were cases like that of Mitchell W. Reed, disqualified from possessing firearms after a 1984 felony cocaine conviction. He also has seven misdemeanor convictions on his record from the 1980s, including for assault. In 2003, he [successfully petitioned for his gun rights](#) in Snohomish County Superior Court.

His wife, Debi Reed, went with him to the hearing and said in an interview that she had been shocked at how easily his rights were restored. He immediately bought a 9-millimeter semiautomatic handgun.

The following year, she said, he beat her up for the first time. In 2008 he became more angry and violent, she said, in one instance putting a gun in her hand during an argument, pointing it at his head and saying he was going to frame her for murder. During another fight that year, he struck her with a gun, giving her a black eye, and [held a loaded gun to her head](#).

Mr. Reed was ultimately arrested in 2009 and [charged with harassing](#) and threatening to kill his wife's ex-husband. While those charges were pending, he was arrested on [second-degree assault charges](#) after he beat up and tried to strangle his wife. The charging documents also mentioned the 2008 gun episode. He eventually pleaded guilty to third-degree assault and intimidating a witness, as well as fourth-degree assault and harassment.

Jason C. Keller, disqualified because of a 1997 burglary conviction, had his [rights restored](#) after a [brief hearing](#) in 2006. He waited a few years before buying a Hi-Point .40-caliber semiautomatic pistol, according to his girlfriend at the time, Shawna Braylock. But she did not trust him with the gun because of his temper, making him keep it at his parents' house.

In 2010, Mr. Keller left a Fourth of July party in the late evening, picked up his gun and drove to the house of a woman he knew. He fired several shots as she stood out front with her 9-year-old son; her 6-year-old daughter was sleeping inside. Mr. Keller pleaded guilty to drive-by shooting, a felony.

In Mr. Zettergren's case, his friends said they were shocked that a judge had restored his gun rights, because they knew he was receiving [disability payments](#), in part because of mental health problems.

"Most of the people around here that knew him, knew that he could be dangerous," said Darrell Reinhardt, one of Mr. Zettergren's friends.

Mr. Zettergren's mental health issues, in fact, have been at the heart of his efforts to appeal his convictions for second-degree murder, second-degree assault and unlawful imprisonment. He had been in counseling since 2000, and several mental health experts had found he had post-traumatic stress disorder and major depression, saying he had a "very high degree of psychological disturbance" and suffered frequent "flashbacks and disturbing images," according to a declaration from a forensic psychologist in one of Mr. Zettergren's appeal briefs. The post-traumatic stress, according to the psychologist, resulted from [scenes he had witnessed](#) years before, including his mother's death by electrocution and the shooting death of a friend.

None of this was reviewed by the judge who heard Mr. Zettergren's gun rights petition.

Donna Bly, the mother of Jason Robinson, Mr. Zettergren's shooting victim, considered suing the county for negligence over the decision but could not find a lawyer to take the case. She also tried bringing the issue up with a state legislator but got nowhere.

"This man did not deserve to have his gun rights back," she said.

Toby Lyles and Lisa Schwartz contributed research. Tom Torok contributed reporting